

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, September 19, 2023

Hearing Room 1675

1:30 PM

2:00-00000

Chapter

#0.00 During the COVID-19 pandemic, and until further notice by the Court, or as otherwise ordered by the Court, appearances for matters heard by Judge Kwan in Courtroom 1675 may be made in-person, by video through Zoom for Government (ZoomGov), or by telephone through ZoomGov. If appearing through ZoomGov, hearing participants and other parties in interest may connect to the video and audio feeds, free of charge, using the connection information provided below.

As a hearing participant, you are free to choose any of these options, except that evidentiary hearings/trials must be in person in the courtroom (unless otherwise ordered). You do not need to call Chambers for advance approval or notice.

If you choose to appear in person, you must comply with all applicable Centers for Disease Control and Prevention (CDC) guidelines regarding the wearing of face coverings and physical distancing inside and outside of the courtroom. Pursuant to the Court's General Order 21-05, where an in-person matter is held in a courtroom, all participants are to observe all safety protocols posted and announced in the courtroom, and Judge Kwan as the presiding judge will determine the protocols in effect in his assigned courtroom consistent with guidance from the CDC. By order of Judge Kwan, all persons that choose to appear in person must wear a face covering or mask covering their nose and mouth, and must observe physical distancing inside and outside of the courtroom. However, with permission of Judge Kwan, a witness testifying on the witness stand may remove his or her face covering while testifying in order for the court and the parties to observe the witness's demeanor. You should not enter the courthouse when feeling unwell, if you have tested positive for COVID-19, or if you fall within the quarantine recommendations after having come into close contact with someone who has COVID 19.

ZoomGov logon information for all matters on today's hearing calendar:

Video/audio web address: <https://cacb.zoomgov.com/j/1618215766>

ZoomGov meeting number: 1618215766

Password: 131579

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Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

Please connect at least 5 minutes before the start of your hearing, and wait with your microphone muted until your matter is called.

Zoomgov hearing etiquette: (a) wait until the judge calls on you, so everyone is not talking at once; (b) when you first speak, state your name and, if you are an attorney, whom you represent (do not make your argument until asked to do so); (c) when you make your argument, please pause from time to time so that, for example, the judge can ask a question or anyone else can make an objection; (d) if the judge does not see that you want to speak, or forgets to call on you, please say so when other parties have finished speaking (do not send a "chat" message, which the judge might not see); and (e) please let the judge know if he mispronounces your name or uses the wrong pronoun.

Docket 0

Tentative Ruling:

- NONE LISTED -

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2:17-23722 Kody Branch of California, Inc.

Chapter 7

Adv#: 2:19-01468 Avery v. Baldwin Sun Inc.

#1.00 Cont'd status conference re: Complaint for avoidance, recovery,
and preservation of fraudulent and transfers
fr. 1/18/22, 11/15/22, 1/17/23, 3/21/23, 5/23/23, 8/15/23

Docket 1

***** VACATED *** REASON: Order Continuing matter to 10/17/23 at 1:30
p.m. ent 7/25/23**

Tentative Ruling:

Off calendar. The adversary proceeding is dismissed by stipulation and order.
No appearances are required on 9/19/23.

Party Information

Debtor(s):

Kody Branch of California, Inc.

Represented By
John-Patrick M Fritz

Defendant(s):

Baldwin Sun Inc.

Pro Se

Plaintiff(s):

Wesley H Avery

Represented By
David Wood
D Edward Hays

Trustee(s):

Wesley H. Avery

Represented By
Kristofer R McDonald
Richard A Marshack
D Edward Hays
David Wood

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2:17-15033 Shapphire Resources, LLC

Chapter 11

#2.00 Cont'd status conference re: Post confirmation of plan

fr. 7/14/22, 8/30/22, 9/20/22, 11/8/22, 1/24/23, 4/25/23, 6/27/23

Docket 1

Tentative Ruling:

Updated tentative ruling as of 9/6/23. No tentative ruling on the merits. Appearances are required on 9/19/23, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 6/22/23. No tentative ruling on the merits. Appearances are required on 6/27/23, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 4/17/23. No tentative ruling on the merits. Appearances are required on 4/25/23, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 1/19/23. No tentative ruling on the merits. Appearances are required on 1/24/23, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 11/1/22. Secured creditor has filed a notice of plan default, asserting plan arrearages approximating \$19,000. Debtor will need to address the notice of default. Appearances are required on 11/8/22, but counsel and self-represented parties must appear either in person in the

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CONT... Shapphire Resources, LLC

Chapter 11

courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Shapphire Resources, LLC

Represented By
Raymond H. Aver

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2:18-13759 Charles Peters

Chapter 11

#3.00 Cont'd status conference re: Post confirmation of plan

fr. 2/15/22, 5/24/22, 8/9/22, 1/10/23. 6/27/23

Docket 1

Tentative Ruling:

Updated tentative ruling as of 9/6/23. The court has reviewed debtor's status report filed on 9/4/23 and is inclined to adopt his suggestion of setting a further status conference in about six months. Otherwise, no tentative ruling on the merits as the court will hear from other parties if there are concerns about the status of this case. Appearances are required on 9/19/23, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 1/9/23. The court intends to call this matter first because one other matter will require extensive argument. Appearing counsel and parties should appear promptly at 1:30 p.m., or otherwise, they may have to wait a long time for this matter to be called.

The court has reviewed debtor's post-confirmation status report filed on 12/28/22. The court is inclined to set a further status conference in six months as suggested by counsel, but will need to hear from other parties in interest. The court would also like to hear from counsel for debtor whether debtor will be filing a motion for final decree at some point or whether continued court supervision is desirable. Appearances are required on 1/10/23, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 5/17/22. The court has reviewed debtor's post-confirmation status report. No tentative ruling on the merits. Appearances are required on 5/24/22, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote

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CONT... Charles Peters
appearance instructions.

Chapter 11

Prior tentative ruling as of 2/10/22. Appearances are required on 2/15/22, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Charles Peters

Represented By
Frank Edel Blanco
Giovanni Orantes
Luis A Solorzano

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2:18-11475 Catherine Trinh

Chapter 11

#4.00 Cont'd status conference re: Post confirmation of plan

fr. 5/10/22, 7/14/22, 10/18/22, 1/24/23, 5/23/23, 9/5/23

Docket 478

Tentative Ruling:

No tentative ruling as of 9/6/23. Plan trustee or his counsel should report on the current status of plan trust administration, including the status of pending litigation. Appearances are required on 9/19/23, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Catherine Trinh

Represented By
Alan W Forsley

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2:19-15197 Anthony Robert Wafford

Chapter 7

Adv#: 2:21-01102 Cowan v. Wafford et al

#5.00 Motion for Reconsideration re: July 14, 2023,
Findings of Fact and Conclusions of Law
re: Contingency fee

Docket 111

Tentative Ruling:

No tentative ruling as of 9/6/23. Appearances are required on 9/19/23, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Anthony Robert Wafford

Represented By
Winston Kevin McKesson

Defendant(s):

Tony Wafford

Represented By
Winston Kevin McKesson

The Palms Residential Care Facility

Pro Se

Does 1 through 100

Pro Se

Movant(s):

Jeffrey W Cowan

Pro Se

Plaintiff(s):

Jeffrey W Cowan

Pro Se

Trustee(s):

Jason M Rund (TR)

Pro Se

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2:18-23361 Zacky & Sons Poultry, LLC

Chapter 11

**#6.00 Motion to Reopen Chapter 11 Case
For a Limited Purpose**

Docket 615

Tentative Ruling:

No tentative ruling as of 9/6/23. Appearances are required on 9/19/23, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Zacky & Sons Poultry, LLC

Represented By
Ron Bender
Juliet Y. Oh
Todd M Arnold
Lindsey L Smith
Riley C. Walter

Movant(s):

Great Rock Capital Partners

Represented By
Susan K Seflin
Jessica L Bagdanov
Cynthia M Cohen

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2:20-21080 Orchid Child Productions, LLC

Chapter 7

Adv#: 2:21-01212 WHOSE DOG R U PRODUCTIONS, INC. v. Wolkowitz

#7.00 Cont'd status conference re: Complaint for declaratory relief and for
injunctive, equitable relief relating thereto

fr. 12/13/22, 12/20/22, 1/3/23, 1/24/23, 3/14/23, 6/27/23, 8/22/23

Docket 1

Tentative Ruling:

Updated tentative ruling as of 8/18/23. The court has reviewed the trustee's unilateral status conference statement on 8/18/23 in which he provided his view on the impact of the recent Supreme Court decision in *Coinbase, Inc. v. Bielski*, 599 U.S. ___, 143 S.Ct. 1915 (2023). Although the court has now heard from the trustee in writing about the Coinbase case, the court has not had the benefit of the views of Whose Dog in writing how Coinbase applies in this bankruptcy case. Procedurally, the only matter before the court on 8/22/23 is the adversary proceeding in which Whose Dog's motion to amend complaint is pending. The main bankruptcy case and Whose Dog's appeal of the court's order on its stay relief motion are not before the court on 8/22/23, although the parties have agreed to continue the hearings in the adversary proceeding pending the Bankruptcy Appellate Panel's decision on Whose Dog's appeal. As the trustee observes out in his status conference statement, there is no motion for stay pending appeal in the main bankruptcy case for the court to address the issue of whether there should be a stay of bankruptcy proceedings pending Whose Dog's appeal. In his status conference statement, the trustee urges that the court rule that bankruptcy proceedings are not automatically stayed pending Whose Dog's current appeal at the BAP or in any subsequent appeal. It is the court's view that such a ruling would be premature as there is no proper motion with appropriate briefing and argument now before the court for it to address the issue. Appearances are required on 8/22/23, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 6/26/23. No tentative ruling on the merits. Parties

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should report on the status of the mediation, their settlement negotiations and the pending appeal of the court's stay relief denial order before the BAP. Appearances are required on 6/27/23, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 3/8/23. No tentative ruling on the merits. Appearances are required on 3/14/23, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Orchid Child Productions, LLC

Represented By
Sanaz Sarah Bereliani
David B Lally

Defendant(s):

Edward M. Wolkowitz

Pro Se

Plaintiff(s):

WHOSE DOG R U

Represented By
Leslie A Cohen

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Gary E Klausner
Carmela Pagay

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2:20-21080 Orchid Child Productions, LLC

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Adv#: 2:21-01212 WHOSE DOG R U PRODUCTIONS, INC. v. Wolkowitz

#8.00 Motion For Leave To Amend Complaint

fr. 3/14/23, 6/27/23, 8/22/23

Docket 47

Tentative Ruling:

No updated tentative ruling as of 8/10/23. Appearances are required on 8/22/23, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 6/22/23. Appearances are required on 6/27/23, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 3/10/23.

The court has reviewed the moving, opposing and reply papers regarding Plaintiff Whose Dog's motion for leave to amend its complaint.

Regarding the proposed amendment to add a third cause of action for breach of contract against the Debtor, there is no opposition to the motion as Defendant Trustee acknowledges the policy of liberality for amendment of pleadings under Federal Rule of Civil Procedure 15 made applicable to this adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 7015. Cause is shown by Whose Dog to amend and add this claim if for the purpose of liquidating its contractual claim against the bankruptcy estate. Thus, the court should grant the motion to amend to add the third cause of action against the Debtor.

Defendant Trustee opposes the motion on grounds that the proposed amendment to add a fourth cause of action against a new party, Vangellow,

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"has no legitimacy, is being asserted purely to harass and intimidate her, and is an abuse of process," and is thus futile. As noted by the parties, Trustee is in the unusual position of asserting arguments which are based on defenses of a third party, Vangellow, and not himself, and perhaps it is not so unusual in that his counsel was Vangellow's former counsel.

As noted by the Rutter Group treatise on Federal Civil Procedure Before Trial, California and Ninth Circuit edition, edited by District Judge Phillips and Chief Magistrate Judge Stevenson of our district court, "Ordinarily, courts do not consider the validity of a proposed amended pleading in deciding whether to grant leave to amend. (Challenges to the pleading are usually deferred until after leave to amend is granted and the amended pleading filed.)" Phillips and Stevenson, Rutter Group Practice Guide: Federal Civil Procedure Before Trial, California and Ninth Circuit Edition, ¶ 8:1514 (online edition, April 2022 update), *citing*, SAES Getters S.p.A. v. Aeronex, Inc. (SD CA 2002) 219 F.Supp.2d 1081, 1086 (citing text); Netbula, LLC v. Distinct Corp. (ND CA 2003) 212 FRD 534, 549 (citing text).

However, as the Rutter Guide also notes, "Leave to amend may be denied if the proposed amendment is futile or would be subject to dismissal." *Id.*, *citing*, Carrico v. City & County of San Francisco (9th Cir. 2011) 656 F3d 1002, 1008; FDIC v. Conner (5th Cir. 1994) 20 F3d 1376, 1385—amendment futile if statute of limitations has run.

The Trustee argues that the statute of limitations on the proposed fourth cause of action against Vangellow for intentional interference with contractual relations of two years under California Code of Civil Procedure § 339 has run by the proposed amended complaint being filed by motion in February 2023. See, e.g., *In re Lockwood*, 414 B.R. 593, 602 (Bankr. N.D. Cal. 2008) ("A cause of action for interference with economic relations must be commenced within two years of the alleged interference. Cal.Code Civ. Pro. § 339."); *McWilliams v. Horton*, 248 Cal.App.2d 447, 454-455 (1967).

The court does not see anything untoward by the Trustee raising what would be Vangellow's statute of limitations defense as the court has discretion not to grant leave to amend if the amendment is futile. Evidently, the Trustee knows that Vangellow would assert such an affirmative defense as he is now

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represented by her former counsel who probably knows that she would assert the defense and that it would be an administrative expense burden on the estate having to litigate the merits of the proposed amendment if it is futile.

The proposed amended complaint does not specifically allege the dates on which Vangellow committed the acts that constitute the alleged interference with contract as the proposed amended complaint only refers to alleged acts by the Debtor Orchid Child and alleges that Vangellow "caused" the Debtor to breach the contract between it and Whose Dog. Based on the court's reading of the proposed amended complaint, it appears that in the proposed amended complaint, Whose Dog alleges that the acts that constituted the alleged breach of contract by the Debtor "caused" by Vangellow occurred before the petition date of December 21, 2020, which is more than two years from the date of the filing of the motion to amend on February 21, 2023.

Trustee argues that the proposed claim against Vangellow is thus time barred. In its reply, citing Federal Rule of Civil Procedure 15(c)(1)(B), Whose Dog argues that the proposed claim is not time barred because it "relates back" to the filing of the original complaint on October 21, 2021, within two years of the petition date of December 21, 2020. While the petition date may be considered a point of reference, the proposed complaint is still unclear as to when the alleged acts of contractual interference occurred to fall within the two year limitations period before the filing of the original complaint on October 21, 2021, that is, two years back to October 21, 2019. For the purposes of the motion, the court assumes arguendo that the alleged acts by Vangellow were on or after October 21, 2019.

In any event, it is not enough as Whose Dog argues to show that the amended complaint meets the standard of Federal Rule of Civil Procedure 15(c)(1)(B) being a claim arising out of the conduct, transaction or occurrence set out or attempted to be set out in the original pleading. Because Vangellow is a new party to be added to the adversary proceeding, Whose Dog's amended complaint must also meet the stricter standard of Federal Rule of Civil Procedure 15(c)(1)(C) relating to amendment of pleadings to name new parties. See also, Federal Rule of Bankruptcy Procedure 7015 (making Federal Rule of Civil Procedure 15 applicable to adversary proceedings); see also, *Leslie v. Ace Gallery New York Corp.* (In re Art & Architecture Books of

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the 21st Century), No. 2:13-bk-14135-RK Chapter 11, Adv. No. 2:15-ap-01679-RK, 2021 WL 1821869 (Bankr. C.D. Cal. May 5, 2021); Phillips and Stevenson, Rutter Group Practice Guide: Federal Civil Procedure Before Trial, California and Ninth Circuit Edition, ¶¶ 8:1635-8:1679.

Federal Rule of Civil Procedure 15(c)(1) states:

(c)(1) When an Amendment Relates Back. An amendment to a pleading relates back to the date of the original pleading when:

(A) the law that provides the applicable statute of limitations allows relation back;

(B) the amendment asserts a claim or defense that arose out of the conduct or occurrence set out---or attempted to be set out---in the original pleading;

(C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for service of the summons and complaint, the party to be brought in by amendment:(i) received such notice of the action that it will not be prejudiced in defending the merits; and (ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

Federal Rule of Civil Procedure 15(c)(1).

Whose Dog has not shown that the Rule 15(c)(1)(C) standard is met as to the proposed new party, Vangellow, that within the period provided under Federal Rule of Civil Procedure 4(m) [i.e., within 90 days of filing of the original complaint) she received notice of the action in that she would not be prejudiced in defending the merits and knew or should have known that the action would have been brought against her, but for a mistake concerning the proper party's identity. It is difficult to see how Whose Dog can show this as Whose Dog in the original complaint only asserted claims against the bankruptcy estate for declaratory and injunctive relief that it (Whose Dog) owns the film footage, and not for breach of contract, let alone, tortious interference with contract, against the Debtor or its principal, Vangellow.

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Moreover, as the Trustee argues, Whose Dog has had "years" to sue Vangellow, a nondebtor party, which could have been accomplished by a separate suit in state court or even an earlier amendment of the complaint in this adversary. Unless Whose Dog can make a satisfactory showing under Rule 15(c)(1)(C), the court is inclined to deny the motion as to that proposed claim as futile based on the two year statute of limitations under California Code of Civil Procedure § 339 and the application of Federal Rule of Civil Procedure 15(c)(1)(C). Based on this record, it does not look like Whose Dog was intending to sue Vangellow by the expiration of the statute of limitations by targeting the wrong defendant and discovering the identity of the party after the statute has run because she would not have been named as a party defendant in the original complaint asserting only claims for declaratory and injunctive relief against the Trustee as the representative of the bankruptcy estate, the successor in interest to the Debtor, regarding ownership of the film footage. See Phillips and Stevenson, Rutter Group Practice Guide: Federal Civil Procedure Before Trial, California and Ninth Circuit Edition, ¶¶ 8:1635-8:1636, citing inter alia, G.F. Co. v. Pan Ocean Shipping Co., Ltd., 23 F.3d 1498, 1503 (9th Cir. 1994).

The Trustee argues that Vangellow is protected by immunity from suit on grounds that there cannot be a contractual inference claim against a counterparty, here, the Debtor, and its agent, here, Vangellow. See *Allied Equipment Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal.4th 503, 510-515 (1994). This is debatable as it appears that Vangellow may have at most an affirmative defense of manager's privilege if she acted in the interest of the Debtor as a contracting party. See *Aliya Medcare Finance, LLC v. Nickell*, Case No. CV 14-07806 MMM (Ex), 2015 WL 11072180 (C.D. Cal. Sept. 25, 2015), at *16 citing *Shapoff v. Scull*, 222 Cal.App.3d 1457, 1464-1466 (1990), disapproved on other grounds by *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal.4th at 510; see also, *Fresno Motors, LLC v. Mercedes Benz USA, LLC*, 771 F.3d 1119, 1125-1127 (9th Cir. 2014) (dicta discussing possible limitations of the "not a stranger" doctrine of the California Supreme Court's holding in *Allied Equipment Corp. v. Litton Saudi Arabia Ltd.*). The published case cited by the Trustee in *Caliber Paving Co. v. Rexford Industrial Realty and Management, Inc.*, 54 Cal.App.5th 175 (2020) does not support his position as the appellate court reversed the trial court's holding that a

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landowner could not be sued for tortious contractual interference with a contract between a paving contractor and subcontractor. The court does not resolve the issue of this particular defense as it should be asserted by Vangellow if she needs to address Whose Dog's proposed claim in the future and does not make any ruling that the proposed claim being filed against her is in bad faith.

The Trustee argues in the opposition that the court lacks jurisdiction over Whose Dog's proposed contractual interference claim against Vangellow outside the bankruptcy court's "related to" jurisdiction under 11 U.S.C. 1334 while Whose Dog argues in the reply that the claim arises out of the same transaction, occurrence or series of transactions or occurrence that form the bases of its claims against the bankruptcy estate. Both sides make colorable arguments about the presence or lack of jurisdiction over the proposed fourth cause of action, and the jurisdictional issue should be best resolved on a more specifically and fully briefed motion to dismiss or for abstention on jurisdictional grounds.

At this stage of the adversary proceeding before the parties engage in full blown litigation, the court intends to inquire of the parties at the hearing whether it would be beneficial to have further mediation between the parties, which would include Vangellow as Whose Dog and its principal, Franco, want a resolution of their disputes with her regarding mutual release of claims. The court has inquired with Bankruptcy Judge Zive, who said he could meet with the parties in April or May in a judicial settlement conference if they had an interest, which would not entail the further expense of a mediator's fee.

Appearances are required on 3/14/23, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Orchid Child Productions, LLC

Represented By
Sanaz Sarah Bereliani
David B Lally

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Defendant(s):

Edward M. Wolkowitz

Represented By
Carmela Pagay
Gary E Klausner

Movant(s):

WHOSE DOG R U

Represented By
Leslie A Cohen

Plaintiff(s):

WHOSE DOG R U

Represented By
Leslie A Cohen

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Gary E Klausner
Carmela Pagay